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IN THE

THE SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM, 1974

No. 74-916

ANTHONY J. RADISICH
Petitioner

v

SONJA JOSEPHINE RADISICH

PETITION FOR A WRIT OF CERTIORARI TO
TO THE COURT OF APPEAL OF CALIFORNIA

FIRST APPELLATE DISTRICT

Anthony J. Radisich
574 El Camino Real,
Mountain View, Calif.
94040
(415-967-7889)
PERSONIA PROPRIA

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 30844

ANTHONY J. RADISICH

Petitioner

v

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE FOR THE FIRST APPELLATE DISTRICT.

The petitioner, Anthony J. Radisich prays that a writ of certiorari issue, to review the opinion and judgement of the Court of Appeal and the California State Supreme Court of California rendered in these proceeding on October 3, 1974 and November 27th, 1974.

OPINIONS BELOW

The opinion of the Court of Appeals as yet unreported, appears at Appendix 23-47. The California Supreme Court

"Hearing Denied" postcard is on Page 48 of Appendix. 48

The order of judgement of the Court of Appeal of the State of California was entered on the 3rd of October, 1974 and Hearing Denied of the California State Supreme Court isssued on the 27th of November, 1974. This petition for certiorari was filed less than 90 days from the date aforesaid. The jurisdiction of this Court is invoked under the 28 USCA 1257 Ph, 10 and 13.

28 USCA 1257 Ph. 10 AMOUNT IN CONTROVERSY.

1. The right to review is not made to depend on the money value of the thing in controversy, but on the character of the right in dispute and the judgment which the state court has pronounced on it.

Buel v Van Ness, Vt 1823, 21 U.S. 312

8 Wheat 312, 5 L. Ed. 624,

Barry v Mercein, N.Y. 1817, 46 U.S. 103 5 How, 103, 12 L.Ed. 70;

Holmes v Johnson, Vt. 1810, 39 U.S. 540, 14 Pet, 540, L. Ed. 579;

Weston v City of Council Charleston, S.C. 1829, 27. U.S. 449. 2 Pet.449, 7 L.Ed 481.

(Q) May a California Court make an award of property before first determining who owns it without violating the XIV Amendment of Our United States Constitution ?

(a) The courts erred in refusing to determine the character of the property before judgment of equal division of property which seized Appellant's property without due process of law and without equal protection of the laws.

(b) Appellant could find no precendent involving the California Family Law Act

wherein the question and conflict has been raised before as to the material gain by fraudulent nondisclosure relating to the equal property division feature of the California Family Law Act.

(c) It is believed that 28 USAC 1257 Ph. 13 will adequately demonstrate the irrecoverable injury which has resulted and will continue to result until the judgement is corrected.

28 USCA 1257 Ph. 13 PERSONS ENTITLED TO INVOKE

2. To have standing to attack constitutionality of statute, a party must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of statute's enforcement.

Cramp v Board of Public Instruction of Orange County, Fla. Fla. 1961, 82 S. Ct. 275. 368 U.S.278, 7 L. Ed. 2 d 285, on

remand 137 So. 2d 828.

(a) Reference is made to the opinion of the Court of Appeal of the the State of California, First Appellate District, Division Two, Dated 3 October 1974 and the California State Supreme Court 27 ~~October~~ November 1974.

(b) Dereliction of the Duty to the Citizen by the Trial Court and the Appellate Court and the State Supreme Court through 27 October 1974.

(c) The Courts refused to determine the validity of Sonja's Quit Claim Deed on the one hand and on the other hand, in defiance of Citizen-Appellant, proceeded to enhance by unjust enrichment female-party, Sonja, by implying the ranch property community in character irrespective of the truth of the matter.

(Q) Does the Trial and the Appellate Court have the power to violate the XIV

Amendent of Our U.S. Constitution by awarding of property for the benefit of the female party in detriment to the male party under the guise of the California Family Law Act which unless modified to protect against nondisclosure, fraud, conspiracy and theft is unconstitutional ?

(a) This is not a matter of descretion but of hard facts and common American Sense, Appellant was not premitted a fair hearing, the question of validity of the Quitclaim Deed is unanswered and has fallen into the lap of the Honorable U.S. Supreme Court as the only avenue available to the Citizen-Appellant in the pursuit of Justice.

(b) Appellant is being denied and deprived property through the indefinite, unilateral and discrimin-

ating practise experienced in the five past years in the Superior Court of Santa Clara County, California; the Courts equal duty to each Citizen has not been practised in this case - Invidious Discrimination has prevailed, Discrimination in favor of the female sex has prevailed, equal protection of the laws has been denied and privileges and immunities stated in the XIV amendment have been abridged.

(Q) In the matter of Sonja's fraudlent nondisclosure, the effect it would have upon the property award ? Again the Trial Court as well as the Appellate Courts, in the dereliction of their obligation of duty to the Applellant (Innocent-Respondent-Father Humanbeing-Citizen) bypass the issue and leave the decision to the U.S.

Supreme Court to decide; appellant faces trauma and torture unequaled in his near 60 years and begs the Honorable United States Supreme Court for equitable Justice.

(a) Substantial legal issues need to be resolved in the interest of the People of California and in the interest of Justice;

(Q) Can a Californian male, rely and depend on the equal protection of the laws as guaranteed by the XIV Amendment, as regarding his propety, when the California Family Act has eliminated fault in the matter of divorce and the California Judicial System has precluded any avenues to determine character of properties?

(a) The Trial Court as well as the Appellate Courts did not concern themselves with the argument as to the

determination of the character of the property and whether fraud may vitiate ab initio interspousal transfers from separate to community status the Courts thus abridged the privilege of having the question raised resolved in a Court of Law as is accorded each other Citizen; an additional denial of the equal protection of the laws to Appellant.

(b) Appellant argued that the transactions accomplised under circumstances of concealment and material non-disclosure should be set aside as it is not the fact of the wrong doing which is relevant but the fact of non-disclosure by Sonja in order to enhance her financial position.

(c) Had there been disclosure of fradulent actions by Sonja, there would not have been transmutations of

of Separate Property to community property, this thus raised substantial legal issues of first impression which have not been superseded by the Family Law Act and which have not been determined by the Trial and Appellate Courts but are left for the Honorable U.S., Supreme Court to decide.

(d) The abortion here of "due process of law " has denied Appellant the provisions of the XIV Amendent.

(e) Appellant, faced with the almost insurmountable obstacles in his fight to survive, turned to Senator Donald Grunsky of the California State Legislature for help.

(f) Senator Donald Crunsky Author of Family Law Act, in one of his several pieces of correspondence to Appellant stated, "There will be those who will be hurt," as regarding his statute

Therefore by self admission, Mr. Grunsky points out that a minority will be hurt, it is a discrimination against this minority and it is UNCONSTITUTIONAL : "NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES: NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW: NOR DENY ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS"

(g) Thus a class distinction excluding protection to "those who will be hurt" is an invidious discrimination as they are not extended the same protection of the laws.

(Q) The character of the property is the question ?

(Q) Can a Trial Court and subsquent

Courts award properties without first determining the character of the property?

(a) The trial Court refused to make an express finding on the issue, absent such a finding, there was no basis for the Court of Appeal to conclude that there was "sufficient substantial evidence" to support a finding that the ranch was acquired as community property.

(b) The Deed "As His Separate Property" and the Quitlaim Deed are in the Appendix P. 54 & 55

(c) The finding that the ranch was acquired as community property is contrary to existing law; additionally it is the burden of Sonja to prove that the ranch was in fact not separate property and an acceptance from the Appellate Court from scant implied

findings of the Trail Court is indeed a violent disregard of Applellant's quality of due process of law and PROTECTION OF THE LAW EQUALLY.

(d) Literally hundreds of pages of perjury were accepted by the Courts enabling the female to prevail to the theft of Appellant's property, it is obvious the Appellate court was mislead as it states in its opinion 1st paragraph that Appellant was born in Europe, this is Invidious Discrimination, Appellant was not given the opportunity to counter several of the items as the hearing was cut short by the Trial Court even though these matters were brought to light as not having been aired yet.

(Q) As to attorney fees, Can a Court in good conscience award attorney fees against Appellant for $10,000.00 when

when the Court has made finding neither on "need" nor on "good faith" ?

(a) Requisite findings are required.

(b) Discretion is not a substitute

(c) Shortening the trial and not allowing the matter of $33,000.00 taken by Sonja unknown to Appellant during the term of the marriage, precluded the opportunity to show ability to pay her own attorney.

(d) Additionally in the so called community by the Courts, there is sufficient value to cover counsel costs, there was no concern here as to the genuine equal division of property as was the intent of the California State Legislature.

(Q) Additionally nothing is said specifically as regarding funds for appeal in The Family Law Act, the question, can a Court award funds from

Appellant to be paid ($3,500.00) for Sonja to pursue Defence and Cross Appeal without requisite findings?

(a) This is a violation of the IV Amendent as the funds were seized without opportunity for recourse; there appears nowhere for a layman Citizen to turn to..

(Q) As regarding the $7,000.00 Educational Fund provided to the child fathered by someone else, question, has the Court the right not to consider this matter?

(a) Had the Fraudulent Actions been disclosed, Appellant would not have set up the fund out of his knowledge that the child is not his.

(b) That Sonja should be charged with misappropriations as suggested by Senator Grunsky, Author of the Statute, the Courtwas not concerned with.

(c) Appellant's opening and closing brief held considerable argument in the matter of misappropriation yet there was no reply from Sonja on these arguments, therefore she is deemed to have conceded the assignment of error.

(d) The Court has erred in not properly treating this issue and Appellant's uncontroverted arguments.

(e) Such denial or refusal to administer the equal protection of the laws is a usurping of the Citizen's due process of law

(f) Watergate is a Kitten; Watergate is a kitten compared to the atrocities committed by Sonja's Attorney Mr. Nevo F. Capitina who electronically bugged and tape recorded a minor, the minor's father parent (Appellant) and the minor's grandparents; he, Mr. Capitina placed an electronic tapeing and

recording device beneath the clothing of a little girl before the child with her three smaller sisters were on visitation with their father and grandparents in the privacy of the grandparents home; the children then recorded for him with this concealed device; this was subsquently discovered.

(Q) Can a Court deny Appellant's motion to produce recorded conversation?

(a) A litigant may under such circumstances be a witness against himself unknown to himself

(b) An attempt to murder Appellant and his wife has already taken place by Sonja and her commonlaw husband both who carry guns

(c) Permitting tapeing and bugging is tantamount to depriving of life, liberty or property

(d) Condoning by the Courts of tapeing and bugging as in this case is not tenable to Appellant and is a vivid discrimination of opportunity to receive equal protection of the laws; by denial

(e) Copy of order denying tapes is in Appendix P. 56

CONTINUATION OF PERSONS ENTITLED TO INVOKE 28 USCA 1257 13

3. Injury under 28 USCA 1275 13

(a) Five years of the pursuit of Justice in the almost unsurmountable obstacles has taken its toll and deprived Appellant of condiserable of his life, has due to prejudice and unilateral action restrainded the liberty, and has conversely placed Appellant in some degree of bondage, and has deprived him of his separate property

(b) This unconstitutinal law has additionally tied up all of Appellant's

parents' properties as well as all of an Aunt's and Uncle's properties in sureties and are still tied up

(c) The Appellate Court's approximate three years before the negative judgement issued with the denial of the Trial Court to allow Appellant equal protection of the law through the Judgement which issued 9 March 1971, copy enclosed, (this judgement it was P. 49-53 stated not too long ago, in confidence by a Superior Court Judge, "Is a terrible Judgement" has cost approximately $100,000.00 and has very nearly annilated Appellant, FAMILY AND RELATIVES as well.

(d) However the greatest and almost mortal wound has been taking away from Appellant Citizen his rights to Justice as stated in the XIV Admendent of Our Constitution; denial to status of

Citizen.

REASONS RELIED ON FOR ALLOWANCE OF WRIT

1. It can not be overly stated of the necessity to review the record in the interest of Justice and interest of California and Our United States

(a) Permitting theft through a statute in which its own author states, "There will be those who will hurt," is not in the best interest of Our Country and Our citizens.

(b) The law has no safeguards as regarding Fraudulent Non Disclosure permitting criminal material gain at the expense of other Citizens and with the tone of connivance placing in jeopardy the other Citizen's dependence on "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal

protection of the laws.

(c) The law is unconstitutional on the additional grounds that it obliveates permission to contradict and therefore to seek Justice thus it is repugnant to our Constitution.

(d) The law is further unconstitutional on the grounds that it tends to enhance the female position over the male position in the matter of material things which is an invidious discrimination and this allowance is also repugnant to our Constitution for it(Our Constitution) upholds that men and women are equal under the law

(e) Appellant prays for Writ of Certiorari To Issue to reaffirm and to recapture the rapport that the FATHER-PARENT-GOOD SOUL- PILLAR OF COMMUNITY with Dignity and Respect use to have and hold in Our Society In the Interest

Of Our Country.

DECLARATION

I was not able to get any attorney to prepare this for me, however I now have an understanding with one, who, as soon as the Honorable U.S. Supreme Court announces that it has granted the Writ of Certiorari, will prepare the briefs; also whatever else is necessary to perfect matter.

Enclosed is your $100.00 filing fee.

I declare under perjury that the above is true and correct executed this 21st Day of January 1975 Mountain View, California.

Anthony J. Radisich

Prepared by Appellant as Attorneys would not prepare.

Anthony J. Radisich
Appellant.
574 El Camino Real
Mountain View, Calif 94040
Phone 415-967-7889

P.S. I have the unsatiable dream that truth will rise and resolve itself into Justice. Please feel free to telephone me collect.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COPY

In The Court of Appeal of the State of California

First Appellate District

Division Two

IN RE THE MARRIAGE OF SONJA J.)
and ANTHONY JOSEPH RADISICH.)

SONJA JOSEPHINE RADISICH,

Appellant,

vs.

ANTHONY JOSEPH RADISICH,

Apellant

FILED
Oct. 3, 1974
Court of Appeal
First App. Dist.
CLIFFORD
G. PORTER
By_____

1 Civil No. 30844
(Sup. Ct. No. P
1728)

On these appeals by the husband and wife from certain portions of an interlocutory judgment[1] of dissolution of marriage granted on the wife's petition, the major contentions concern the sufficiency of the evi-

[1] The husband appeals from paragraphs 3,4,6,7,8,9,10, 11,13,19,20,22 and 24 of the judgment; the wife cross-appeals from paragraph 5

dence to support the trial court's characterization of certain assets as community or separate property. For the reasons set forth below, we have concluded that the judgment should be affirmed, with the exception of paragraph 7 thereof, which should be stricken as in excess of jurisdiction.

I. THE HUSBAND'S APPEAL

Viewing the record most strongly in favor of the judgment, as we must, the pertinent facts are as follows: The parties were married in October 1954 in Yugoslavia, when the husband was 39 years old and the wife 17. He had lived in the United States for a number of years and returned to Yugoslavia to claim a bride. At the time of the marriage, he was the owner of a business, Anrad Hardware, as well as the real property on which it was located, in Mountain View. In 1953, he finished adding a warehouse and two apartments to the business property.

When the wife immigrated to the United States in

February 1955, she was unable to read or write English. Immediately after her arrival, she began to work in the hardware store. After the first child was born in December 1955, she brought the child to the store while she worked. The wife first performed menial tasks in the store and warehouse, as well as some bookkeeping; as she developed more facility with English, her duties increased.

Neither party was paid a salary. Prior to the purchase of the ranch, all living expenses were paid from the store account. After the ranch was purchased, the parties maintained a separate bank account for each operation. However, both parties were authorized to sign checks and drew on either account and funds were transferred from one account to the other as needed.

In 1957, the parties purchased a 10-acre apricot ranch on Bernardo Avenue in Sunnyvale for $80,000 (hereafter "ranch"). The source of funds for the pur-

chase price was as follows: 1) three notes signed by both the husband and wife totaling $50,000: $28,000 on a note to the husband's parents; about $11,950 on a note to First Western Bank (now United California Bank); and $10,000 on a note to the seller; 2) the $30,000 balance came from the hardware business.

The deed conveyed title to the ranch in the name of the husband only as "a married man as his separate property." In addition, the wife signed what she described as a $10,000 "quit deed" to secure a loan from the seller, whereby she relinquished any interest in the property and expressed her intention that the ranch was the husband's separate property. This document, executed April 25, 1957, was signed by the wife at the direction of her husband when she was alone in the office of the husband's attorney, who spoke only English. At this time, the wife was 19 years old, still did not speak or read English fluently and was not clear as to what she had signed. She also did not

know that the title to the ranch was only in the name of the husband. He made the purchase as a surprise for her and when he showed it to her for the first time, said: "Well, this is ours . . . I bought it for us."

After the parties moved into the ranch house in 1957, the wife devoted her time to the bearing of children, working at the store or on the store books at home, as well as working on the ranch. She planted trees, harvested the crops, supervised fruit pickers and drove the tractor. In 1957, the apricot crop was sold for $1,800; subsequent crops were sold for about $10,000. The wife's parents also moved into the home and worked on the ranch.

In October 1965, most of the ranch was sold to a developer for about $238,000. The deed conveying the property to the buyers was signed by the husband and wife "of a community interest." A note and deed of trust executed by the buyers were in favor of the husband and wife and a year later, a vacant lot on Ber-

nardo Avenue was reconveyed by the buyer to the parties as community property. The parties retained the two-lot parcel with the house that in 1967 was conveyed by the parties to the wife's parents for $30,000.

Between October 1965 and their separation in October 1969, the parties acquired, with the proceeds of the sale of the ranch, the family home in Los Altos, the lot in Cupertino, the family automobiles, and the other assets, whose characterization is in issue on the husband's appeal.

The trial court found that the hardware business was the separate property of the husband, that the Cupertino, the family automobiles, and the other assets, whose characterization is in issue on the husband's appeal.

The trial court found that the hardware business was the separate property of the husband, that the Cupertino lot was joint tenancy property, and that all of the other assets, including the vacant lot on Bernar-

do Avenue and the note on the property conveyed to the wife's parents, were community property. The court awarded one automobile to each party and ordered that the joint tenancy and community property be divided equally between the parties.[2] The court further found that the sum of $7,000 in the name of each of the five children was the property of each child pursuant to the stipulation of the parties, and that the youngest of the five children, born May 21, 1966 was not the child of the husband. The court also ordered the husband to pay the wife's attorneys' fees from his share of the community property. Additional facts will be set forth as needed in our discussion of the contentions of each party.

The husband's major contention on appeal is that

[2] The husband also complains of the trial court's failure to make an express disposition of the bank account that it found to be community property. This contention is spurious as the only reasonable inference to be drawn from the judgment is that, like all of the other community assets, it is to be equally divided between the parties.

the trial court erred in finding that the proceeds of the sale of the ranch and the assets subsequently acquired from the proceeds were community property. He contends that there is insufficient substantial evidence to overcome the presumption arising from the separate form of title of the conveyance of the ranch, and the quitclaim deed signed by the wife to secure the $10,000 loan from the seller.[3]

The trial court's finding that property is either sep-

[3] The husband attempts to argue that the quitclaim was executed later. He also asserts that the trial court erred in failing to make a specific finding concerning the invalidity of the wife's quitclaim deed. He urges that since he made timely objections to the trial court's finding and specifically requested a special finding on the due execution and validity of the quitclaim deed, the wife was not entitled to a presumption in favor of its invalidity (Code Civ. Proc., pp 634). He contends that the issue of his fraud with respect to the quitclaim was a material issue requiring an express finding and that the finding was material within the meaning of the above statute. We cannot agree. As the trial court found that the ranch was community property when acquired, despite the form of the conveyance to the husband, the validity of the quitclaim deed was not a material issue.

arate or community in character is binding and conclusive on a reviewing court if supported by substantial evidence, even though there may be conflicting evidence or evidence subject to different interpretations (In re Marriage of Jafeman, 29 Cal. App. 3d 244).

The presumption arising from the declarations conveyed is a disputable one and thus was not, in the instant case, rendered conclusive by the circumstance that the deed recited it was made to the husband as his separate property. However, the wife did have the burden of proving that the ranch was not the husband's separate property (Baron v. Baron, 9 Cal. App.3d 933, 939). Whether the evidence was sufficient to carry the burden of proof was for the trial court to resolve (McLellan v. McLellan, 23 Cal.App.3d 343, 356; Geller v. Anolik, 127 Cal. App.2d 21, 26). The determining fact is the intent of the parties rather than the form of the grant or the source of funds (Knego v. Grover, 208 Cal. App.2d 134). The agreement or understanding

of the intentions of a husband and wife as to the status of property as separate, community or joint tenancy is determinative. Such an agreement may be expressed or implied or their understanding or intention may be inferred from their conduct or declarations (Long v. Long, 88 Cal.App.2d 544, 549) The acts of the parties and their dealings with the property may also establish that they intended a community interest (Estate of Nelson, 224 Cal. App.2d 138, 143).

After he had made the downpayment on the ranch in April 1957, the husband told the wife that he had purchased it as a surprise for her. The trial court could have reasonably inferred that he took title in separate form only to effect the surprise and immediately made a gift of her community share to her. His additional contemporaneous statements "Well, this is ours" and "I bought it for us," and the wife's acquiescence are also indicative of the parties' intent or oral agreement to treat the property as community. The subse-

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quent conduct of the parties is also consistent with this intent. Substantial evidence indicated that the notes signed by the parties for the property were repaid with community funds. The wife testified that the repayment of the note to her husband's parents was made with the earnings from the ranch and store, as well as by articles taken from the store by his parents, including appliances. The sum of $11,950 borrowed from First Western Bank was also repaid with community funds. Until the sale of the ranch, both parties worked on it and at the store, and transferred and comingled funds from the ranch and store accounts as needed. As neither party received a salary, the family living expenses were drawn from both accounts as needed.

Prior to the sale of the ranch, the husband said to the wife: "We have a buyer who is going to buy our property. Work hard. This is ours and we're selling it." At the time of sale, the husband had said to the

wife: "Well, you work on it. You get half of it so it's ours now together." The ranch was then sold, conveyed by both as a community property interest[4] and the payments from the sale were made to both of them. The vacant lot on Bernardo Avenue reconveyed by the seller was reconveyed as community property. The retained parcel subsequently conveyed to the wife's parents was also conveyed and treated by the parties as community property. Considering the record as a whole, we conclude that there was sufficient substantial evidence to support the trial court's implied finding that the understanding of the parties was that the ranch was acquired as community property.

It follows, therefore, that since the trial court properly concluded that the ranch was community property, its proceeds retained that character. Except as discussed below, the husband does not challenge on

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[4] Although the husband attempted to show that the form of the conveyance was contrary to his instructions and intentions, the trial court apparently did not believe this evidence.

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appeal the trial court's findings that the assets subse-
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quently acquired from the proceeds of the ranch were also community property. In this connection, he contends only that the trial court's finding that the lot on Homestead Road in Cupertino was a true joint tenancy property in accord with the form of the title, is inconsistent with the court's findings as to theother assets. He argues that the inconsistency is in itself a ground for reversal. The husband argues that since the trial court chose to ignore the presumptions arising from the joint tenancy form of the title as to the bank account, automobiles and the parcel conveyed to the wife's parents, the same result was required as to the Cupertino property.

As indicated above, the trial court had the burden of resolving the conflicting evidence concerning the assets of the parties, and was not required to come to the same conclusion as to each asset. As the record indicates that the rental income from the Cupertino

property was not deposited in the joint bank accounts of the parties, the court could have concluded that there was insufficient evidence to overcome the presumption arising from the form of the title. (Gudelj v Gudelj, 41 Cal.2d 202, 212-213.)

The husband correctly points out that the trial court's order for sale of the joint tenancy property and the division of the proceeds was beyond its jurisdiction (Donovan v. Donovan, 223 Cal. App.2d 691, 696). However, as each party owns an undivided one-half interest in joint tenancy property, the fairness of the division of the community properties made by the trial court was, in no way, affected by its improper assumption of jurisdiction over the Cupertino property. Thus, the proper disposition is to merely strike paragraph 7 from the judgment (Fox v. Fox, 18 Cal.2d 645).

The husband also argues that because of the wife's adultery and concealment of her illegitimate pregnancy in late 1965, the sale of the ranch and all subsequent

transactions, which resulted in a financial advantage to her, must be set aside for her fraudulent nondisclosure. Although a substantial part of the proceedings were devoted to establishing the illegitimacy of the last child, the husband's theory of fraudulent nondisclosure was only briefly mentioned to the trial court. We think this theory was properly rejected.

The major purpose of the Family Law Act (Stats. 1969, adding Sec.4000-5138 to the Civ. Code) was to eliminate fault in California divorce law [5] (17 UCLA L.Rev. 1306, et seq.). The new act repealed the former specific grounds for divorce that included adultery (former Civ. Code, Sec. 92) and requires an equal division of community property, regardless of the conduct of the parties. The husband's contention is an unconscionable

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[5] Altbough the pleadings were filed prior to the January 1, 1970 effective date of the Family Law Act, the hearing occurred thereafter. Accordingly, the new law is applicable (in re Marriage of Silvers, 23 Cal.App.3d 910).

attempt to revive the former law.[6] Thus, the old cases cited by the husband concerning a spouse's duty of disclosure of the material fact of pregnancy are no longer pertinent. In any event, the record indicates that the trial court awarded support for only the four older children.

The husband also attempts to complain about the $7,000 gift made to the last child from the proceeds of the ranch sale at the same time as the $7,000 gift to each of the other children. The record, however, indicates that this portion of the trial court's judgment is based on the stipulation of the parties which was made after the husband was aware of all the facts. Accordingly, paragraph 10 of the judgment confirming the gifts to the children must be affirmed.

The husband next argues that the trial court erred.

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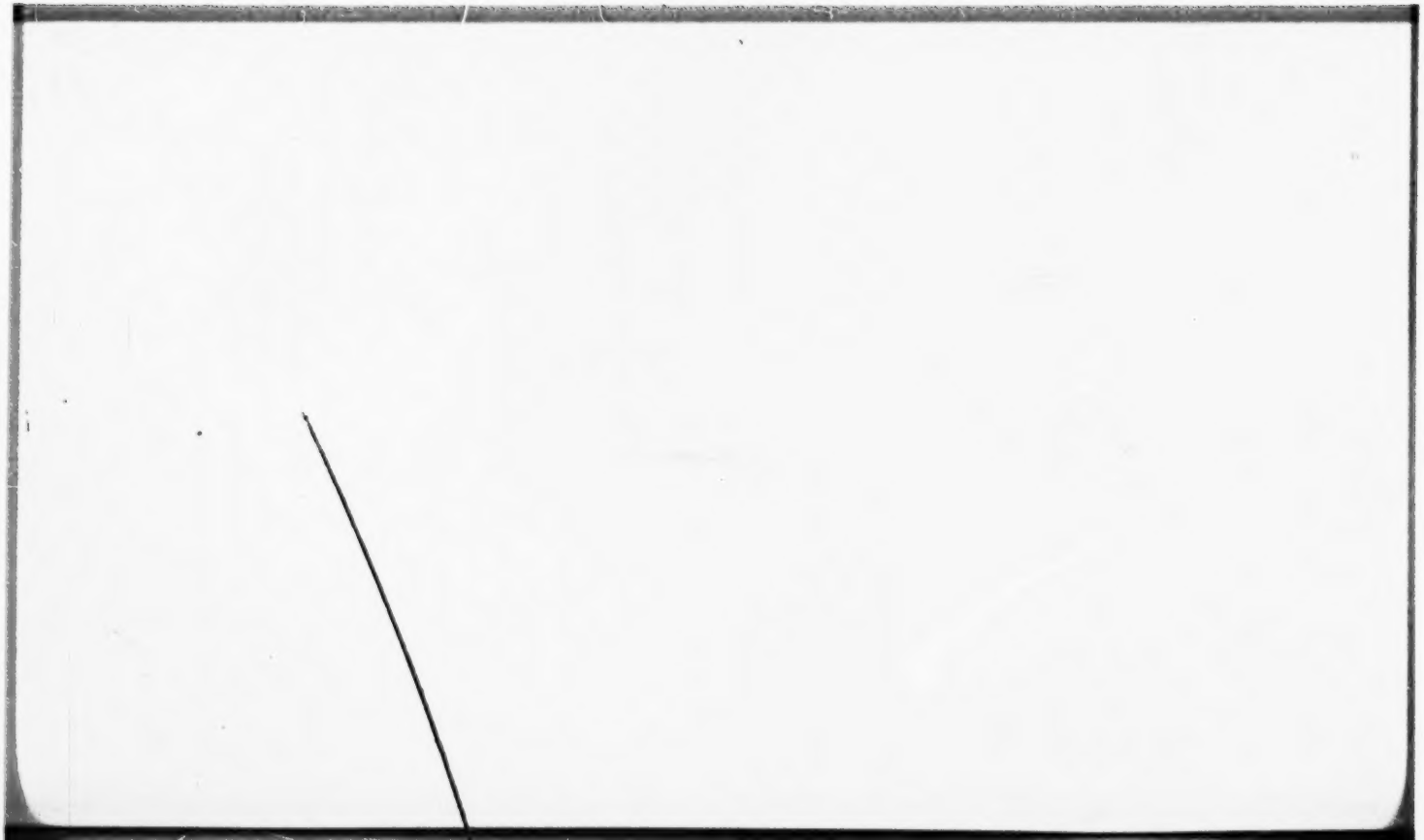
[6] Under the new law, the conduct of the parties is pertinent on the issue of child custody (Civ. Code, Sec. 4509). While the husband appealed from the portion of the judgment awarding custody to the wife, he raised no contentions on appeal on that issue.



in ordering him to pay attorneys' fees and court costs. He maintains that since the payment of attorneys' fees is a community obligation, the award of attorneys' fees against one spouse results in an unequal division of community property, contrary to section 4800 of the Family Law Act, which requires an equal division of community property. This court (Division One) recently rejected an identical contention as follows: "First, we note that the Legislature's primary intent in requiring an equal division of the property was to attempt to eliminate acrimony. This purpose is not thwarted by permitting an award of attorneys fees. We cannot assume that a spouse will utilize his right to attorneys' fees to promote discord. Moreover, without the award of attorneys' fees a spouse who does not have the necessary funds to participate in the proceedings may be deprived of the equal share of the community property which the Legislature's expression of an intent that women not be accorded different treatment from men, does not indicate

an intent to disallow attorneys' fees in an appropriate case. Rather, this only suggests that the same considerations must be invoked in making an award to either husband or the wife.

"In resolving the issue before us we are guided by the principle that 'Statutes should be construed so as to harmonize the various sections, and wherever possible seemingly conflicting provisions should be reconciled to avoid the declaration of an irreconcilable conflict." (In re Marriage of Paddock, supra, 18 Cal.App.3d 355, 359.) As we have already noted, the Family Law Act substantially re-enacts the various former sections pertaining to the award of attorneys' fees. The new legislation specifically grants the superior court jurisdiction to award attorneys' fees. These sections can only be reconciled with the requirement of equal division of property by concluding that the Family Law Act did not effect a change in the previous case-law. Such a conclusion seems warranted by the fact that even under the

PERJURY

previous sections it was not found that an award of attorneys' fees was incompatible with the requirement of equal division of the community property." (In re Marriage of Jafeman, 29 Cal App 3d 244, 266)

Under the prior law, the matter of attorneys' fees was within the sound discretion of the trial court (Civ Code, Sec 4370; Chapman v Tarentola, 187 Cal App 2d 22; Hunter v Hunter, 202 Cal App 2d 84) It is well settled that the trial court's discretion will not be disturbed on appeal unless there is a manifest abuse of discretion (Owens v Owens, 210 Cal App 2d 705)

The husband also argues that the trial court's finding of fact pertaining to attorneys' fees is inadequate to support the award of $10,000 plus court costs to the wife's attorney. This likewise is a matter that rests within the sound discretion of the trial court. The instant matter consumed 11 days of trial. We find no manifest abuse of discretion here, either in the award of attorneys' fees to the wife or as to the amount awarded. We

note that as in Jafeman, supra, pages 266-267, the court here properly considered the $5,000 paid to his counsel by the husband. Accordingly, we conclude that the paragraphs of judgment in issue on the husband's appeal must be affirmed.

II. THE WIFE'S APPEAL

The wife appeals only from that portion of the judgment decreeing that the hardware store business, the real property on which it was located and the business bank account (hereafter "business properties"), were the separate property of the husband. She does not dispute that the business and the property on which it was located were owned by the husband before the marriage, but maintains that in the absence of specific records as to how the funds from the ranch and store were intermingled, the husband has not met his burden of proof that the business properties were his separate property (Millington v. Millington, 259 Cal.App.2d 896).

PERJURY PERJURY

The wife relies on the applicable rule recently sum-

marized by our Supreme Court in Beam v. Bank of America, 6 Cal.3d 12, at 17 as follows: "Section 5108 of the Civil Code provides generally that the profits accruing from a husband's separate property are also separate property. Nevertheless, long ago our courts recognized that, since income arising from the husband's skill, efforts and industry is community property, the community should receive a fair share of the profits which derive from the husband's devotion of more than minimal time and effort to the handling of his separate property. (Pereira v. Pereira (1909) 156 Cal. 1, 7 (103 P. 488); see Millington v. Millington (1968) 259 Cal. App.2d 896, 907-908 (67 Cal. Rptr. 128) and cases cited therein)."

The husband testified that he had expended only a minimum effort in improving the business, and the wife introduced no evidence as to the value of his services. Also, no evidence was adduced to indicate that there had been any increase in the value of the business prop-

erty apart from natural enhancement Under such circumstances, no apportionment of increase in value between community or separate property is required and the entire property can be treated as separate (Millington v Millington, 259 Cal App 2d 896, 910) As there was testimony from the bookkeeper that the store sustained substantial losses from 1957 to 1964, made a profit of $5,922 34 in 1965 and again suffered losses in 1966, 1968 and 1969, there was ample substantial evidence to support the finding that the business properties were the separate property of the husband, on this basis.

In any event, even assuming an increase in value, there was ample substantial evidence to support the conclusion that the business properties were the separate property of the husband. Over the years, our courts have evolved two quite distinct alternative approaches to allocating earnings between separate and

community income in such cases. One method of apportionment, first applied in Pereira v. Pereira, 156 Cal 1, 17, and commonly referred to as the Pereira approach, "is to allocate a fair return on the (husband's separate property) investment (as separate income) and to allocate any excess to the community property as arising from the husband's efforts." (Estate of Neilson, 57 Cal 2d 733, 740). The alternative apportionment approach, which traces it derivation to Van Camp v. Van Camp, 53 Cal App. 17, 27-28, is "to determine the reasonable value of the husband's services , allocate that amount as community property, and treat the balance as separate property attributable to the normal earnings of the (separate estate)." (Tassi v Tassi, 160 Cal App 2d 680, 690.)

"'In making such apportionment between separate and community property our courts have developed no precise criterion or fixed standard, but have endeavored to adopt that yardstick which is most appropriate and

equitable in a particular situation . depending on whether the character of the capital investment in the separate property or the personal activity, ability, and capacity of the spouse is the chief contributing factor in the realization of income and profits (citations) (Par) In applying this principle of apportionment the court is not bound either to adopt a predetermined per centage as a fair return on business capital which is separate property (the Pereira approach) nor need it limit the community interest only to (a) salary fixed as the reward for a spouse's service (the Van Camp method) but may select (whichever) formula will achieve substantial justice between the parties (Citations.)'" (Beam v. Bank of America, 6 Cal.3d 18; Logan v Forster, 114 Cal App 2d 587, 599-600; see Millington v. Millington, 259 Cal App 2d 896,910; Haldeman v Haldeman, 202 Cal App 2d 498,505. Tassi v. Tassi, 160 Cal. App.2d 680, 691)

Prior to the marriage, the husband had $28,000 in the business account. At the usual reasonable rate of 7 percent (Beam v. Bank of America, supra, 19), from 1954 to 1970, the business would have increased by $1,960 a year, or a total of $31,360. According to the court appointed expert, at the time of the hearing, the business properties had a fair market value of $30,750; there was $10,000 cash in the business account, a total of $40,750, even less than that to be expected at the 7 percent basis.

Paragraph 7 of the judgment ordering the sale of the Cupertino property and the division of the proceeds is hereby ordered stricken as in excess of jurisdiction. The remaining portions of the judgment appealed from are affirmed. Each party to bear own costs on appeal.

PERJURY
Husband was forced to pay $3500.00 for Wife's Appeal!

WE CONCUR.

Taylor, P.J.

Kane, J.

Rouse, J.

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

NOV 27 1974

I have this day filed Order

HEARING DENIED

In re: 1 Civ. No. 30844

Marriage of Radisich

vs.

Respectfully,

G. E. BISHEL
Clerk

48

4102740

VR 9523 PG 339

Name, Address and Telephone Number of Attorney(s)

[illegible]

Space Below for Use of Court Clerk Only

(ENDORSED)

FILED

MAR 10 1971

GEORGE E. FOWLES, Clerk

P. HOLLAND

DEPUTY

Attorney(s) for [illegible]

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

In re the marriage of

Petitioner: [illegible]

and

Respondent: [illegible]

CASE NUMBER

P 17231

INTERLOCUTORY JUDGMENT OF DISSOLUTION OF MARRIAGE

This proceeding was heard on 10/26/70 (Date) before the Honorable [illegible]

Department No. [illegible]

The court acquired jurisdiction of the respondent on 11-3-70 (Date) by:

☐ Service of process on that date, respondent not having appeared within the time permitted by law.

☐ Service of process on that date and respondent having appeared.

☐ Respondent on that date having appeared.

The court orders that an interlocutory judgment be entered declaring that the parties are entitled to have their marriage dissolved. This interlocutory judgment does not constitute a final dissolution of marriage and the parties are still married and will be, and neither party may remarry, until a final judgment of dissolution is entered.

The court also orders that, unless both parties file their consent to a dismissal of this proceeding, a final judgment of dissolution be entered upon proper application of either party or on the court's own motion after the expiration of six months from the date the court acquired jurisdiction of the respondent. The final judgment shall include such other and further relief as may be necessary to a complete disposition of this proceeding, but entry of the final judgment shall not deprive this court of its jurisdiction over any matter expressly reserved to it in this or the final judgment until a final disposition is made of each such matter.

IT IS SO ORDERED, ADJUDGED AND DECREED as follows:

[illegible]

[illegible]

[illegible]

Form Adopted by Rule 1207 of Judicial Council of California Effective January 1, 1970

INTERLOCUTORY JUDGMENT OF DISSOLUTION OF MARRIAGE

1534

BOOK 8323 PAGE 324

Sonja J. Radisich and
Anthony J. Radisich

Ex. P Full

1. Petitioner SONJA J. RADISICH is entitled to a dissolution of marriage based upon irreconcilable differences.

2. The youngest of the children, DANIA LOUISE RADISICH, born May 21, 1966, is not the child of respondent.

3. Petitioner is a fit and proper mother to have the care, custody and control of the four minor children, namely, CORNELIA NIELSEN RADISICH, born December 27, 1959; MARY ANN RADISICH, born June 10, 1957; JANET SONJA RADISICH, born July 15, 1960 and DANIA JOSEPHINE RADISICH, born October 13, 1962, with reasonable rights of visitation by respondent as follows: the first and third Saturday or Sunday of the month from 2:00 P.M. to 5:00 P.M. Petitioner is to deliver the children to a mutual place so that respondent may obtain said children and thereafter transport the children back to petitioner's driveway without any physical contact. The court reserves the right to continue the matter for visitation privileges for a period of six months until May, 1971, at which time a Juvenile Probation Department report will be made and up dated. Both parties are precluded from making any derogatory remarks about the other in front of their children. Both parties shall be enjoined from taking the children outside the State of California without the prior approval of the court or written consent of the other party.

4. Respondent is to pay the sum of $100.00 per month as and for support and maintenance of the four children, namely, CORNELIA NIELSEN RADISICH, born December 27, 1959; MARY ANN RADISICH, born June 10, 1957; JANET SONJA RADISICH, born July 15, 1960 and DANIA JOSEPHINE RADISICH, born October 13, 1962. Respondent shall pay to petitioner the sum of $100.00 per month as and for spousal support for a period of three years, as and for payment to commence December 1, 1970. No provision is made for support thereafter and subsequent alimony in the event of remarriage.

5. That business heretofore known as Anrad's Hardware located at 574 W. El Camino Real, Mountain View, California is awarded to ANTHONY J. RADISICH as his sole and separate property and also awards that real property and all improvements thereupon located at 576 W. El Camino Real, Mountain View, California, to ANTHONY J. RADISICH as his separate property, including that bank account known as Anrad's Hardware, at the United California Bank, Mountain View, California.

Subsequent liquidation which is ordered Retroactive to 1st December 1970.

POOR COPY

6. The court awards the family home located at 23701 Moss Heights Way, Los Altos, California to petitioner SONJA J. RADISICH, and respondent ANTHONY J. RADISICH, as community property and orders that the family home be sold and the proceeds be equally divided between the parties.

7. The lot in Cupertino known as 20180 Homestead Road, is joint tenancy property and that petitioner and respondent each has a one-half undivided interest in the whole. Said property shall be sold and the proceeds equally divided.

8. The vacant lot on Bernardo Avenue, Sunnyvale, is community property and said property shall be sold and the proceeds equally divided.

9. That note secured by a Deed of Trust payable to ANTHONY J. RADISICH and SONJA J. RADISICH, on a home and two lots located on Bernardo Avenue, Sunnyvale, California, is community property and each party shall share equally in said note secured by a Deed of Trust presently encumbering said property. Any interest established in a separate action determining that said home and two lots be that of petitioner and respondent or either party alone is community property and shall be equally divided between the parties hereto.

For the purpose of education

10. The court awards the certificates of deposit in the amount of $7,000.00 to each of the five children as a gift to the five children as per stipulation by the parties and their respective attorneys.

11. The sum of $3,134.70 presently in a trustee account with Dave P. Crittden and Alfred P. Chacuk, is to be equally divided between petitioner and respondent.

Judge Costello

12. Should there be an obligation due and owing to the parents of ANTHONY J. RADISICH as determined by a court of competent jurisdiction that it is to be a community obligation and each party is to pay said obligation in equal shares.

13. The following named life insurance policies are community property and any value attached thereto shall be equally divided:

State Life of Indiana Policy Numbers 621709; 667486; 674429; 702831; 713372; 763044; 754360 and 863397.

14. The furniture located at 23281 Mora Heights Way, Los Altos, California and a Volkswagen heretofore given to Thelma Franulavoic is awarded to petitioner and is an offset against sums which respondent borrowed in the amount of $7,459.10 against said mentioned policies hereinabove by ANTHONY J. RADISICH and that said policies are community property. Any value remaining against said policies is community property and shall be equally divided.

15. The court awards the Creation policies, No. E 54332, JT 35912, E 35920, E 35922, A 24613, AJT 24613, E 24876, E 24875, A 8249, AJT 8249, E 8250, E 8257, A 3597, AJT 3597, E 3640, E 3672, A 19453, E 19205, AJT 19453 and E 19339 to petitioner, SONJA J. RADISICH and she shall continue said policies until each child reaches the age of 21.

16. The court awards one share of Admiral Stock to petitioner and one share of Admiral Stock to respondent.

17. Any amount of a loan that John Frankovic owes to petitioner and respondent is community property and any sum deemed due and owing is to be equally divided to the parties.

18. The sum of $950.00 due and owing Mr. Dennis Lee, a court appointed appraiser, shall be paid from the community property of the parties hereto.

19. Respondent, ANTHONY J. RADISICH, shall pay to Mayo F. Capitina, attorney for petitioner, the sum of $10,000.00 plus court costs in the sum of $686.27, in addition to any other attorney fees and costs heretofore paid by ANTHONY J. RADISICH, from his share of the community property or his separate property.

20. The court awards the sum of $5,000.00 heretofore paid out of community funds by respondent to his attorney as a fee paid to respondent's attorney and said sum shall not be reimbursable to any of the parties and shall stand as paid.

21. Any taxes due and owing on joint tenancy property or community property shall be an obligation of each party as to his one-half, including any delinquent taxes.

22. The court awards the 1968 Plymouth automobile to respondent and the 1963 Ford Mustang automobile to petitioner.

23. The court awards that loan in the sum of $910.00 due and owing to petitioner and respondent by Mrs. Lopa Segrt Hoffman to respondent, ANTHONY J. RADISICH.

24. The account in the United California Bank, No. 6140194777 in the amount of $25,747.00 plus interest, is community property.

25. All property which has heretofore been ordered to be sold shall be done as follows:

The property shall be placed for sale by the owners themselves or be listed with a real estate broker acceptable to both parties, but neither party to be arbitrary in the choosing of the same, at a price which is comparable to other sales in the area. Should either party not agree to accept a price, then said property should be appraised, appraiser to be appointed by the Court, and his determination shall be accepted as the fair price at which said property shall be placed for sale at some figure comparable to the appraised price. Upon the sale of said property, all expenses shall thereupon be paid incident to the sale of the property.

Dated:

MAR 9 - 1971

Peter A...

Judge of the Superior Court

The foregoing instrument is a correct copy of the original on file in this office.

SEP 2 8 1971

GEORGE E. FOWLES, Clerk

County Clerk and ex-officio Clerk of the Superior Court of the State of California in and for the County of Santa Clara.

By _____ Deputy

4102740

BOOK 9323 PAGE 363

FILED AND RECORDED AT REQUEST OF

O. F. Appleton

Sep 29 11 26 AM '71

OFFICIAL RECORDS SANTA CLARA COUNTY GEORGE E. FOWLES RECORDER

Deed of Reconveyance
(CORPORATION)

BOOK 4069 PAGE 29

Whereas, the indebtedness secured to be paid by the deed of trust executed by ANTHONY RADISICH, a married man, as his separate property,

to CALIFORNIA PACIFIC TITLE INSURANCE COMPANY,

a corporation,

as Trustee, dated April 25, 1957 and recorded on April 25, 1957 in the County Recorder's Office of the County of Santa Clara State of California, in book 3784 of Official Records (1333062), at page 728 has been fully paid

Now, therefore, CALIFORNIA PACIFIC TITLE INSURANCE COMPANY, a corporation,

as Trustee, does hereby GRANT and RECONVEY unto THE PARTIES ENTITLED THERETO, without warranty, all the estate and interest derived to the said Trustee, under said deed of trust, in the lands therein described, situated in the City of Sunnyvale County of Santa Clara, State of California, reference being hereby specifically made to said Deed of Trust and the record thereof for a particular description of said lands.

Date: May 5, 1958

Approved for Execution

CALIFORNIA PACIFIC TITLE INSURANCE COMPANY
a corporation, Trustee

BY: Vice President

AND BY: Assistant Secretary

STATE OF CALIFORNIA
COUNTY OF SAN MATEO } ss.

On May 5, 1958 before me, G. M. PATTERSON, a Notary Public in and for said County and State, personally appeared PAUL L. JOHNSON known to me to be the Vice President, and LEONEY P. HINMAN known to me to be the Assistant Secretary of the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same pursuant to its by-laws or a resolution of its board of directors.

(Seal)

G. M. Patterson
Notary Public

My Commission Expires 7-10-60

RECORDING DATA

14677116
BOOK 4069 PAGE 29

FILED FOR RECORD
AT REQUEST OF
California Pacific Title Insurance Co.
MAY 7 2 48 PM 1958
OFFICIAL RECORDS
SANTA CLARA COUNTY
RECORDED

Doc

Quit Claim Deed

This Indenture, made the 25th day of April A. D. 19 57

between Sonja Radisich also known as Sonja J. Radisich the party of the first part, and Anthony Radisich the party of the second part,

AT REQUEST OF [illegible] AND WHEN RECORDED MAIL THIS INSTRUMENT TO [illegible]
APR 29 3 56 PM 1957
OFFICIAL RECORDS SANTA CLARA COUNTY
RECORDER
2.00
Above space for Recorder

Witnesseth: That the said party of the first part HAS remised, released and forever quitclaimed and by these presents DOES remise, release and forever quitclaim, unto the said party of the second part, all that real property situate in the city of Sunnyvale County of Santa Clara, State of California, and described as follows:

All of Lot 17, as shown upon that certain Map entitled "Map of the B.D. Murphy Subdivision No. 1", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on December 2, 1896 in Book I of Maps, at page 47.

SONJA RADISICH executed this Deed for the express purpose of relinquishing any interest she might now have or might hereafter acquire in the above described property, it being her intention to vest title to the same in ANTHONY RADISICH, her husband, as his sole and separate property.

In Witness Whereof, the said first party has hereunto set her hand the day and year first above written.

Sonja J. Radisich

State of California, County of Santa Clara, } ss.

On this 25th day of April, 19 57, before me Kenneth R. Malovos a Notary Public in and for said County, personally appeared Sonja J. Radisich also known as Sonja Radisich

known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same.

In witness whereof I have hereunto set my hand and official Seal.

Notary Public in and for the County of Santa Clara, State of California

SAN JOSE ABSTRACT & TITLE INSURANCE CO.

NEVO F. CAPITINA
361 Castro Street
Mountain View, California 94040
Telephone: 967-6904

Attorney for Petitioner

MAR 30 1971

GEORGE E. HOWELL, Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

In re the marriage of Petitioner: SONJA JOSEPHINE RADISICH and Respondent: ANTHONY JOSEPH RADISICH.	No. P 17281 ORDER

The above-entitled matter came on regularly for hearing on November 10, 1971 and November 11, 1971 pursuant to various motions served on petitioner and respondent, Nevo F. Capitina appearing with and on behalf of petitioner SONJA JOSEPHINE RADISICH and Alfred P. Chasuk appearing with and on behalf of respondent ANTHONY JOSEPH RADISICH, the Court having been duly advised in the premises and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That respondent ANTHONY JOSEPH RADISICH's motion to produce recorded conversation of the children is hereby denied.

2. That petitioner SONJA JOSEPHINE RADISICH's motion for an increase in child support and spousal support is